IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Menendez et al.	:	
Serial No.: 09/698,502	:	Examiner: Vig, Naresh
Filed: October 27, 2000	:	Group Art Unit: 3629
For: Method for Completing and Storing an Electronic Rental Agreement	:	

SECOND DECLARATION OF DAVID G. SMITH PURSUANT TO 37 CFR 1.132

Comes now David G. Smith, and being duly warned of the penalties for perjury, gives the following declaration in support of the subject patent application:

1. I am employed by Enterprise Holdings, Inc., a wholly owned subsidiary of The Crawford Group, Inc., and I currently serve as a Vice President of Enterprise Holdings. I have 23 years of experience in the rental car industry. Vanguard Trademark Holdings USA LLC, which is the owner of the subject patent application, is a wholly owned subsidiary of Vanguard Car Rental USA, LLC, which is a wholly owned subsidiary of Enterprise Holdings.

2. I have previously served as Assistant Vice President of Internet Solutions for the Enterprise Rent-A-Car Company, a predecessor company of Enterprise Holdings. In that capacity, I was actively involved in the implementation of electronic business systems for processing rental vehicle transactions electronically, including on-line services for processing vehicle rental reservations, processing invoices and payments for vehicle rentals, and documenting and reporting vehicle rental and repair information via the Internet.

3. I am a co-inventor of several patents and patent applications for inventive technology used in the rental car industry to process rental vehicle transactions throughout their full lifecycle, from the reservation phase through the rental contract phase to an invoicing phase. Examples of patents and patent applications for which I am a co-inventor include U.S. Patent Nos. 7,275,038, 7,899,690, 8,160,906, 8,160,907 8,340,989, 8,374,894, and 8,401,881

and U.S. Pat. App. Pubs. 2007/0260496, 2007/0271124, 2007/0271125, 2008/0243562, 2008/0243563, 2012/0197672, 2012/0203581, and 2012/0203582, among others.

4. I repeat and reiterate the statements I made in my previous Declaration dated April 18, 2008 for this patent application. Furthermore, I have reviewed and analyzed the Decision on Appeal dated February 7, 2013 for the subject patent application. My comments in this declaration are based on my extensive years of experience and expert knowledge in the rental car industry, and I am making this declaration to identify and explain several factual errors that are present in the statements and analysis of the Decision on Appeal.

5. For example, in the Decision on Appeal, the Patent Trial and Appeal Board parses the term "master rental agreement" into its individual words to conclude that the meaning of "master rental agreement" is an original rental agreement from which copies are made. (See Decision on Appeal; page 5, line 14 – page 6, line 9; page 9, lines 12-14 and lines 20-24). However, based on my extensive years of experience and expert knowledge in the rental car industry, this interpretation of the term "master rental agreement" is clearly erroneous and unreasonable. **Instead within the rental car industry, the ordinary meaning of the term "master rental agreement", both now and at the time of invention for the subject patent application, is a rental agreement that serves to define the terms and conditions for several rental vehicle transactions over time rather than for only a single rental vehicle transaction.** Thus, when a customer and a rental car company enter into a master rental agreement, the "master" modifier to "rental agreement" in the combined term "master rental agreement" serves to indicate that the terms and conditions of the subject master rental agreement will control and be applied to a plurality of future rental vehicle transactions between the customer and the rental car company.

6. I further note that this ordinary meaning of the term "master rental agreement" in the rental car industry is consistent with its usage in the subject patent application. For example, at page 1, lines 14-17, the patent application states in a section entitled "Field of the Invention" that "[t]he present invention relates to a method for completing a rental agreement and, more particularly, to a method for completing and storing an electronic rental agreement for an item or service, such as a vehicle rental service." This statement indicates to me that

the terminology in the subject patent application is to be viewed from the perspective of how the terminology would be understood within the rental car industry.

7. Within the rental car industry, repeat customers of rental vehicle services, such as corporate customers or frequent business travelers, often enter into Master Rental Agreements (MRAs) with rental car companies as a means for streamlining their future rental transactions. In these situations, the customer enters into an MRA with the rental car company, and then this MRA serves as the basis for the terms and conditions for future rentals by that customer from the rental car company. By leveraging an MRA in this manner, the rental vehicle pick up process can be expedited because the customer has already agreed to the necessary terms and conditions for the rental transaction. This arrangement is described in the patent application where it is acknowledged that it is "known to online-enter a reservation based upon a pre-existing master rental agreement, in order to bypass a rental counter at a rental facility." (See Patent Application at page 2, lines 30-31). With this arrangement, because of the pre-existing MRA, there is no need for the customer with the pre-existing MRA to sign a rental contract at the rental counter of a car rental facility because the rental car company and the customer have previously agreed to the necessary terms and conditions. Furthermore, this statement in the patent application further corroborates my statement above as to the proper ordinary meaning of the term "master rental agreement" within the rental car industry.

8. Also corroborating my statement above as to the proper ordinary meaning of the term "master rental agreement" within the rental car industry are the discussions in the patent application at page 3, lines 6-13, page 17, line 24 – page 18, line 7, and page 31, line 23 – page 32, line 2. These discussions describe an embodiment of the invention where a customer who does have a pre-existing MRA with the rental car company is able to create an electronic rental contract for a rental vehicle transaction using a disclosed system embodiment. If a customer provides "a suitable Member ID 228" via the web page of Figure 6B, the system is able to pre-select items for the rental transaction from the customer's pre-existing MRA linked to that Member ID. Thus, the user has the ability to use the pre-existing MRA to control the current rental vehicle transaction. This further indicates to me that the patent application uses the term "master rental agreement" in accordance with its ordinary meaning in the art.

9. Moreover, based on my extensive years of experience and expert knowledge in the rental car industry, I find the interpretation of "master rental agreement" from the Decision on Appeal to be unreasonable. First, it appears to me that the Decision on Appeal arbitrarily chose from among various dictionary definitions for the word "master" to arrive at a meaning for the term "master rental agreement". That is, the Decision on Appeal failed to provide a reason as to why the fifth dictionary definition for "master" was chosen over the other four dictionary definitions listed in the Decision on Appeal. (See Decision on Appeal; page 6, lines 6-9). To the extent that the Decision on Appeal is relying upon a "broadest reasonable interpretation" as the basis for its selection of the fifth dictionary definition (see Decision on Appeal; page 9, lines 20-24), the Decision on Appeal fails to provide any rationale as to why the fifth definition is broader or more reasonable than any of the other four definitions, particularly given that the fifth definition appears to be the most narrow and specific. Second, the Decision on Appeal failed to give any consideration to the usage of the term "master rental agreement" as a whole within the rental car industry or even within its context in the patent application.

10. I also disagree with the statements in the Decision on Appeal at page 9 concluding that the phrase "regardless of whether the user has a pre-existing master rental agreement"[1] is of unclear scope. The Decision on Appeal's indefiniteness conclusion in this regard is predicated upon its erroneous interpretation of "master rental agreement". The Decision on Appeal incorrectly states that the scope of the phrase in question "must include only those implementations from which no copies are made." (See Decision on Appeal; page 9, lines 14-15). Based on this incorrect statement, the Decision on Appeal further incorrectly states that because computer systems regularly make copies of data from original inputs, there is "an internal logical inconsistency" in the phrase. (See Decision on Appeal; page 9, lines 15-20). However, as noted above, the ordinary meaning of the phrase "master rental agreement" in the rental car industry is not an original rental agreement from which copies are made but instead a rental agreement that serves to define the terms and conditions for several rental

[1] The phrase in full within the context of independent claim 62 is "wherein the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility". Independent claim 113 includes a similar recitation.

vehicle transactions over time. When the correct meaning of the term "master rental agreement" is applied to the phrase "regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility", it cannot be disputed that the phrase is of clear and definite scope. To test whether the condition is applicable or not, one need only determine whether there is a pre-existing rental agreement between the user and the rental car company that operates the car rental facility, wherein this pre-existing rental agreement is meant to define the terms and conditions for several rental vehicle transactions over time.

11. Moreover, based on my extensive years of experience and expert knowledge in the rental car industry and my review of the patent application, I conclude that the term "pre-existing" in combination with "master rental agreement" refers to a master rental agreement that was in existence prior to the initiation of the rental vehicle transaction at issue between the user and the rental car company.

12. Another statement in the Decision on Appeal that is clearly erroneous is its statement that "[c]ertainly all of the information necessary for the contract is in any reservation that a prudent car rental company would employ". (See Decision on Appeal; page 11, lines 1-2). In explaining why this statement is erroneous, it will be helpful to first reiterate concepts from my previous Declaration that highlight the distinctions that exist between "rental vehicle reservations" on the one hand, and "rental agreements" or "rental contracts" on the other hand within the rental car industry. A rental vehicle reservation is a non-binding agreement between a customer and a rental car company regarding a future rental of a rental vehicle by the customer. Typically within the rental car industry, a rental vehicle reservation merely specifies a location (e.g., a particular car rental facility of the rental car company), a time period (e.g., a start date/time and an end date/time), a vehicle type (e.g., a full-size car, a compact car, etc.), and minimal customer information for identification purposes (e.g., name and address). A customer that has merely booked a rental vehicle reservation with a rental car company will not be permitted to pick up a rental vehicle and depart from the car rental facility with the rental vehicle. To actually be permitted to pick up a rental vehicle and depart from the car rental facility, the customer will need to enter into a rental contract (i.e., rental agreement) with the rental company. (See "Declaration of David. G. Smith Pursuant to 37 CFR 1.132" dated April 18, 2008; paragraph 11). Thus, customers who have merely booked rental vehicle

reservations have historically been required to visit a rental counter at a car rental facility when arriving at the car rental facility in order to complete a rental contract with the rental car company. As such, within the rental car industry, a significantly greater amount of information is necessary for a rental contract than that which is collected for a rental vehicle reservation. For example, items of information that are typically not required or collected to book a rental vehicle reservation include driver's license information (including verification thereof) and credit card information (including processing thereof for payment).

13. However, to complete a rental contract, rental car companies require customers to provide driver's license information for verification purposes and credit card information for payment purposes. Thus, to complete an MRA, the customer will typically need to include driver's license information (e.g., state, driver's license number, expiration date) and credit card information on an enrollment/application form. Upon receipt of the enrollment/application form, the rental car company can then review this driver's license information and credit card information before deciding whether to accept the customer's application. If the driver's license information and credit card information (together with any other requirements) are acceptable, then the rental car company will accept the application to create the MRA. The customer in turn would be notified of the MRA acceptance, which may include mailing a membership card to the customer that includes a member ID number that is tied to the customer's MRA with the rental car company.

14. Therefore, as explained above, the statement in the Decision on Appeal at page 11, lines 1-2 that "all of the information necessary for the contract is in any reservation that a prudent car rental company would employ" is wholly incorrect. Not only are there fundamental and binary functional differences between a rental vehicle reservation and a rental contract (i.e., the customer is not permitted to depart the car rental facility with a rental vehicle pursuant to the former while he or she is permitted to depart the car rental facility with the rental vehicle pursuant to the latter), but different items of information and processing tasks are needed to complete rental contracts than rental vehicle reservations.

15. I further note that the error in the Decision on Appeal with regard to the differences that exist between rental vehicle reservations and rental contracts, both in content

and functionality, undermine a number of other statements made in the Decision on Appeal. For example, the Decision on Appeal also states:

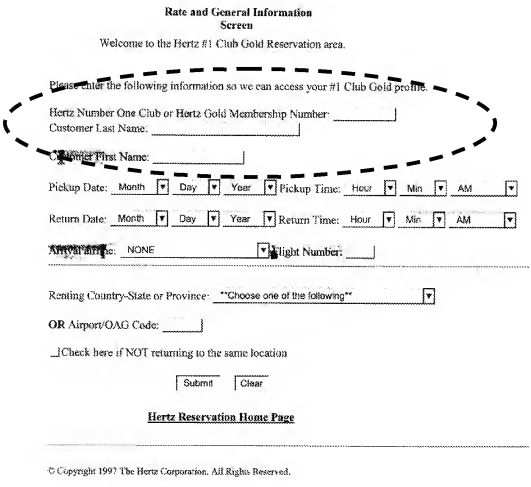
> There is no argument of technical infeasibility, or even difficulty in copying data from a reservation to a contract. It is not even necessary to copy data from a reservation – **the reservation itself may simply be subsequently recognized as a contract**. There is no patentable distinction between a reservation and a contract, **if they are otherwise the same**. (See Decision on Appeal; page 11, lines 2-7 (emphases added)).

It is simply incorrect that within the rental car industry a mere rental vehicle reservation would ever be recognized as a rental contract. As explained above, additional items of information are received and additional verification tasks are performed in order to complete a rental contract relative to a rental vehicle reservation. Moreover, given that rental vehicle reservations and rental contracts are not in fact "otherwise the same", the statement as to the lack of "patentable distinction" is rendered inapplicable to the facts at hand.

16. I have also reviewed and considered the Hertz, Avis, and HertzGold references cited in the Decision on Appeal, as well as Applicant's Appeal Brief dated April 16, 2012 including the evidentiary exhibits cited therein. Based upon this review and consideration, and based on my extensive years of experience and expert knowledge in the rental car industry, I conclude that the statement in the Decision on Appeal that "[i]t is unclear that Hertz actually requires members to be a Gold Club member to be able to bypass the rental counter" is incorrect. (See Decision on Appeal; page 10, lines 22-23). I am in full agreement with the remarks on this topic at pages 16 and 18-22 in Applicant's Appeal Brief dated April 16, 2012. This evidence demonstrates to me that (1) to become a member of the Hertz #1 Club Gold program, a customer must enter into an MRA with Hertz, and (2) to take advantage of the counter bypass features described by HertzGold, the customer must have a Hertz #1 Club Gold membership (and thus a pre-existing MRA) with Hertz. Therefore, based upon my review of the evidence in this patent application relating to the Hertz online system, it is clear to me that the Hertz online system is configured to condition its counter bypass rental vehicle transaction on the customer having a pre-existing MRA.

17. In support of my conclusion above regarding the nature of the Hertz online system, I note that the Hertz screenshot shown in Exhibit 7 from Applicant's Appeal Brief

dated April 16, 2012 (reproduced below) shows the data input requirements for customers of the "Hertz #1 Club Gold Reservation area". The screen requests two items of information so that the Hertz online system can access the customer's "#1 Club Gold profile": (1) a "Hertz Number One Club or Hertz Gold Membership Number", and (2) a "Customer Last Name", as shown within the dashed lines below.



Rate and General Information Screen

Welcome to the Hertz #1 Club Gold Reservation area.

Please enter the following information so we can access your #1 Club Gold profile.

Hertz Number One Club or Hertz Gold Membership Number:

Customer Last Name:

Customer First Name:

Pickup Date: Month Day Year Pickup Time: Hour Min AM

Return Date: Month Day Year Return Time: Hour Min AM

Airline Code: NONE Flight Number:

Renting Country-State or Province: **"Choose one of the following"*

OR Airport/OAG Code:

Check here if NOT returning to the same location

Submit Clear

Hertz Reservation Home Page

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Based on this screenshot and my extensive years of experience and expert knowledge in the rental car industry, I conclude that the software executed by the Hertz online system checks a database using the customer-provided membership number and last name to determine whether the customer has a pre-existing MRA with Hertz (via the Hertz #1 Club Gold membership). If the customer is determined to have a pre-existing MRA, the software permits the customer to continue with the rental vehicle transaction whereby the customer would be permitted to bypass the rental counter. However, if the customer is determined not to have a

pre-existing MRA (i.e., the database does not show a customer last name tied to the provided membership number), the software would not permit the customer to proceed with the rental counter-bypass rental transaction.

18. My observations above in paragraphs 16-17 highlight another factual error in the analysis found in the Decision on Appeal. The Decision on Appeal states that "HertzGold makes it clear the Gold Club is a marketing tool rather than a technical requirement." (See Decision on Appeal; page 11, lines 10-11). However, this statement is contradicted by the screenshot above which shows that membership in Hertz #1 Club Gold (and thus a pre-existing MRA) is a technical requirement of the software to permit a customer to book a rental vehicle transaction that permits the customer to bypass the rental counter. As explained above, the software behind the screenshot performs a check on the customer's membership, and the customer's ability to bypass the rental counter is conditioned on this check resulting in a determination that the customer is a #1 Club Gold member. The marketing aspect of the HertzGold article is merely that for certain repeat customers, the membership fee of the Hertz #1 Club Gold program will be waived. HertzGold fails to describe any change in the technical features of the Hertz online system that supports counter bypass rental vehicle transactions only for #1 Club Gold members.

19. Thus, the embodiments of the invention described in the subject patent application exhibit a number of technical differences relative to the cited references. For example, the inventive server system of the subject patent application does not condition counter bypass features on the customers having pre-existing MRAs. Even in an embodiment where the server system performs a check to determine whether the customer has a pre-existing MRA, the server system does not block the customer from creating an electronic rental contract (wherein the electronic rental contract permits the customer to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract) if the customer is determined not to have a pre-existing MRA. Instead, any pre-existing MRAs are merely leveraged to provide data pre-fill functions. (See Patent Application; page 17, line 24 – page 18, line 7). Thus, the invention described in the subject patent application permits a customer who has had no prior experience or interaction with the rental car company in question to electronically create an electronic rental contract with that rental car company prior to arrival at a car rental facility and thereby

permit the customer to expedite the rental vehicle pickup process by avoiding going to the rental counter to complete a rental contract at the rental counter. This "one-touch" transaction was at the time the invention was made a fundamentally new and different type of rental vehicle transaction than that contemplated by the cited references where "two touches" with the customer are required – a first touch to enroll in a rental program and create the pre-existing MRA and a second touch where the customer later leverages this pre-existing MRA for a rental vehicle transaction that permits the customer to bypass the rental counter. As another example of technical differences, the server system of the subject patent application in a disclosed embodiment is configured to create the rental vehicle reservation and the electronic rental contract during a single visit by a client system to the website. (See Patent Application; Figure 6D and Figures 3 and 6F-6L for the process flow that would follow customer selection of the "rent" button 292 in Figure 6D). This once again highlights the "one touch" versus "two touch" distinction between the invention and the cited references. Further still, in certain disclosed embodiments of the patent application, the server system can also perform validation operations on the customer's driver's license information and/or credit card payment information during this single visit to the website. (See Patent Application; page 18, line 23 – page 19, line 5; page 22, lines 22-28). I further note that the cited references are silent regarding the performance of such validation operations effectively in real-time when a customer visits the website to create a rental vehicle reservation and then provides additional data to create the subject electronic rental contract, all during the same website visit.

20. I have personal knowledge of the foregoing statements and believe them to be true. To the extent that the foregoing is opinion, it is based on the facts recited herein and my knowledge and experience in the art.

Having been duly warned that willful false statements and the like are punishable by fine or imprisonment, or both under 18 USC 1001, and may jeopardize the validity of the subject application or any patent issuing thereon, the declarant submits the foregoing declaration.

/David G. Smith/ April 5, 2013
David G. Smith Date